IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NOS. 2 AND 3 OF 2005

CRIMINAL REVISION APPLICATION NO.2 OF 2005

Mr. Noel D'Souza,
Major,
Presently in Judicial Lock-up,
Mapusa-Goa. ... Applicant.

Versus

1. State ,
   as represented by
   Police Inspector, Puttur Town
   Police Station, Puttur,
   Mangalore South,
   State of Karnataka.

2. Public Prosecutor,
   High Court of Bombay at Goa,
   Panaji. ... Respondents.

CRIMINAL REVISION APPLICATION NO.3 OF 2005

Mr. Edwin Miranda,
Major,
Presently in Judicial Lock-up,
Mapusa-Goa. ... Applicant.

Versus

1. State,
   as represented by

Police Inspector, Puttur Town
Police Station, Puttur,
Mangalore South,
State of Karnataka.

2. Public Prosecutor,
High Court of Bombay at Goa,
Panaji. ... Respondents.

Mr. J. P. D'Souza, Advocate for the Applicant in both the applications.

Ms. Kavitha Shanbhogue Y, Advocate for the Respondent No.1 in both the applications.

Mr. S. N. Sardessai, Public Prosecutor for Respondent No.2 in both the applications.

CORAM: N. A. BRITTO, J.

DATE : 4TH FEBRUARY,2005.

ORAL ORDER

These applications for revision have been filed by the accused who were initially arrayed as accused nos.3 and 4 in Special Case No.23/2004 before the Special Court at D. K. Mangalore and now as accused nos.1 and 2 before the Special Court, Mapusa, Goa, in Special Case No.23/2004.

2. These revision applications have been filed by the said accused against the Order dated 10-1-2005 of the learned Special Judge, Mapusa,

Goa, refusing bail to them. Since Orders granting bail are in the nature of interim Orders which can be modified from time to time, as the situation warrants, the revision applications have been converted into applications for bail and are being disposed of as such by the present common Order. Some facts are required to be stated to understand the controversy involved in these applications.

3. On or about 24-2-2004 at about 10.10 p.m., the Police Inspector of Mangalore, Puttur Police Station of the State of Karnataka apprehended A-1, Vamana Bhat, who was found in possession of 5 gms. of heroin. A-2, Arunraj Mohandas, was stated to have supplied the said heroin to the said A-1, Vamana Bhat. As he escaped from the spot, A-2, Arunraj Mohandas, was apprehended on 25-2-2004. On being interrogated, A-2, Arunraj Mohandas, disclosed that the said heroin was supplied to him by A-3, Noel D'Souza(one of the applicants herein) and as a result of which the said Police Inspector proceeded to Calangute and went to the house, as pointed out by the said A-2, Arunraj Mohandas. The said Police Inspector then pretended that he was an intending customer whereupon it is stated that A-3, Noel D'Souza, told him to come to Calangute Beach where he would be supplied with the said heroin. It is also stated that A-4, Edwin Miranda, (one of the applicants herein) was found along with the said A-3, Noel D'Souza and thereafter it is stated that both A-3, Noel D'Souza and

A-4, Edwin Miranda attempted to supply 960 gms of heroin to the said Police Inspector. Thereafter, A-3, Noel D'Souza and A-4, Edwin Miranda were prosecuted before the Special Judge, D. K. Mangalore under Sections 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985(Act, for short).

4. The learned Special Judge, Mangalore, initially refused bail to A-4, Edwin Miranda, first by Order dated 10-6-2004 and then by Order dated 16-8-2004. Subsequently, A-3, Noel D'Souza, and A-4, Edwin Miranda filed applications for their discharge from the said Special Case No.23/2004 and the learned Special Judge, Mangalore, by his Order dated 27-10-2004, came to the conclusion that A-3, Noel D'Souza, and A-4, Edwin Miranda could not be tried jointly along with A-1, Vamana Bhat and A-2, Arunraj Mohandas. The learned Special Judge, Mangalore further came to the conclusion that A-3, Noel D'Souza and A-4, Edwin Miranda could not be tried by him as he had no territorial jurisdiction to try the offences allegedly committed by them. This conclusion was arrived at on the assumption that the offences committed by A-3, Noel D'Souza and A-4, Edwin Miranda were committed at Calangute, Goa, within the jurisdiction of the Special Court at Mapusa, Goa. The learned Special Judge, Mangalore, however, was of the opinion that A-3, Noel D'Souza and A-4, Edwin Miranda could not be discharged but they were to be sent to the Special Court having jurisdiction

and, therefore, directed the said Police Inspector, Mangalore, to take immediate steps to file required charge-sheet against A-3, Noel D'Souza and A-4, Edwin Miranda. Presumably, the learned Special Judge, Mangalore, was of the opinion that A-1, Vamana Bhat and A-2, Arunraj Mohandas could be tried together because the offences committed by them were committed in the course of the same transaction while the offences committed by A-3, Noel D'Souza and A-4, Edwin Miranda, were not committed in the course of the same transaction.

5. The Police Inspector, Mangalore, chose not to test the correctness of the Order of the learned Special Judge dated 27-10-2004 but in obedience to the same submitted a charge-sheet against A-3, Noel D' Souza and A-4, Edwin Miranda which was registered as Special Case No.23/2004. On the said charge-sheet being filed, the learned Special Judge, Mapusa, Goa, secured the custody of A-3, Noel D'Souza and A-4, Edwin Miranda from the custody of the Special Judge, Mangalore and on or about 20-11-2004 after furnishing copies of the case papers to the said A-3, Noel D'Souza and A-4, Edwin Miranda, remanded the said accused to custody. It appears that the learned Public Prosecutor appearing before the learned Special Judge, Mapusa, Goa, has excused himself from appearing in the said case and the learned Special Judge has directed a notice to be given to the said Police Inspector to arrange their own Counsel. It is not

known whether the learned Special Judge, Mapusa, Goa, has taken cognizance of the offences against the said A-3, Noel D'Souza and A-4, Edwin Miranda, but the fact remains that now the case is fixed on 9th instant at the stage of hearing of arguments for framing the charge against the accused.

6. Mr. J. P. D'Souza, the learned Counsel on behalf of A-3, Noel D'Souza and A-4, Edwin Miranda, has submitted that the detention of the said accused by the learned Special Judge, Mangalore, after Order dated 27-1-2004 and now by the learned Special Judge, Mapusa, Goa, is unlawful and being so, the said accused would be entitled to bail.

7. Mr. S. N. Sardessai, the learned Public Prosecutor, who was initially disinclined to appear and who did make a submission at the request of the Court, has submitted that the accused be not admitted to bail and the point of jurisdiction be kept open to be decided by the learned Special Judge, Mapusa, Goa.

8. Ms. Kavitha Shanbhogue Y, the learned Counsel appearing on behalf of the said Police Inspector has referred to Section 37(1)(b) of the Act and has submitted that in terms of Sub-Clause(ii) thereof the accused would not be entitled to bail.

9. Mr. D'Souza, has placed reliance on two Judgments of this Court. The first is the case of **Suryakant Ramdas More and others** v. **State of Maharashtra (1990(1) Mah.L.R 319).** The second is an unreported Judgment of this Court dated 18-7-1998 in Criminal Miscellaneous Application No.88/98 between **Joaquim M. Correia** v. **State of Goa.**

10. In the first case of **Suryakant Ramdas More and others** (supra) the accused were arrested on 24-6-1989 under the Act. They were produced before the Metropolitan Magistrate, Bombay on the next day and the learned Magistrate initially remanded the accused for 12 days and thereafter on the expiry of the 12 days had extended the remand by another 10 days. On 12-7-1989, the accused had filed an application for bail and pending consideration of that application they were produced before the Additional Sessions Judge, Bombay, on 17-7-1989 and thereafter they were remanded by him from time to time. Bail Application being filed before the learned Additional Sessisons Judge, the same was rejected holding that he was invested with the powers of the Special Court to be established under the Act and that by virtue of Section 36-D of the Act he was competent to remand and hold the trial. However, till then the charge-sheet was not filed. This Court held that the Magistrate had no powers to grant remand

for a period exceeding 15 days and in fact had granted remand for 22 days and, therefore, this Court admitted the said accused to bail holding that the detention which was unauthorised could not be cured on the date on which the bail application was filed and since they were under unauthorised detention they were entitled to be released on bail.

11. In the case of **Joaquim M. Correia** (supra) the Special Court was constituted by Notification dated 27-3-1992 with Shri A. D. Salkar as its Presiding Officer. Thereafter, Shri Salkar was transferred in the first week of June, 1998 and after the said transfer no Special Judge of the said Special Court at Mapusa was appointed. Only on or about 9-7-1998 Shri Kenkre was appointed as the Special Judge of the Special Court, Mapusa. The contention which was raised was that on 12-6-1998 when the accused were remanded by Shri Kenkre, as Special Judge of Narcotic Drugs and Psychotropic Substances Court, Mapusa, he had no jurisdiction to remand the accused as on that date the charge of the Special Court, Mapusa, had continued with Shri Salkar, who till then had not been denotified. This Court held that Shri Kenkre had no authority to exercise power of remand in relation to the said accused and the proper course for Shri Kenkre was to have referred the case to Shri Salkar, whose appointment as a Special Judge was in force on 12-6-1998 and it is Shri Salkar who alone could have granted remand of the accused on 12-6-1998 and could have taken

cognizance of the offences alleged against the accused. This Court held that the detention of the accused from 12-6-1998 onwards was unauthorised for two reasons. Firstly, because no cognizance of the offence alleged against the said accused was taken on the basis of the charge-sheet which was filed on 12-6-1998 and the period of 90 days had expired on 26-6-1998. Secondly, Shri Kenkre had no authority to remand the accused. The Court, therefore, proceeded to grant bail to the said accused.

12. On behalf of Respondent No.1, certain decisions have also been relied upon and they all pertain to bail not being granted without considering the mandatory provisions of Section 37(1)(b)(ii) of the Act.

13. Section 36-A of the Act makes the offences under the Act triable by Special Courts and sub-section(1) thereof provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973(a), all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government.

14. Clause (d) of sub-section(1) of Section 36-A of the Act provides

that a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or the State Government authorised in that behalf, take cognizance of that offence without the accused being committed to it for trial.

15. The expression "police report" has not been defined under the Act and for that matter one will have to go to the provision of Section 2(r) of the Code of Criminal Procedure, 1973(Code, for short) which defines a "police report" to mean a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173 of the Code. Section 173(2) of the Code inter alia provides that as soon as investigations are completed under Chapter XII of the Code, the officer incharge of the Police Station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating various particulars mentioned therein.

16. It is common knowledge that all offenders in all cognizable cases are prosecuted by the State. The question is whether a Police Inspector in charge of Police Station in Karnataka State can file a charge-sheet in the State of Goa? The first salvo has already come from the learned Public Prosecutor stating that he has no authority to conduct the case. The

learned Special Judge, has rightly noted that the Police Inspector, Puttur Police Station has no all-India jurisdiction like C.B.I. The learned Special Judge, Mapusa, has also expressed a prima facie view that the charge-sheet which is filed by Mangalore Police Inspector would not amount to a Police Report in the context of Section 36-A(1)(d) of the Act but has not come to any conclusion whether in such a situation, the learned Special Judge could take cognizance of the offences alleged against the accused or whether the learned Special Judge had jurisdiction to proceed with the trial. In my view, these questions are primarily and at the first instance required to be decided by the learned Special Judge as submitted by the learned Public Prosecutor Mr. Sardessai. However, in my view, the accused need not remain in custody till then. Prima facie, it appears that their detention by the learned Special Judge, Mapusa, is unlawful and, therefore, I am inclined to admit the accused to bail, provisionally.

17. The applications, therefore, are hereby granted. Each of the accused, Noel D'Souza and Edwin Miranda shall be admitted to bail upon execution of a Bond in the sum of Rs.20,000/- with two sureties in the like amount to the satisfaction of the learned Special Judge, Mapusa, with a further condition that the accused shall report to Calangute Police Station every Mondays any time between 5 p.m. to 6 p.m. until the question of taking cognizance and or of jurisdiction to decide the case is decided by the

learned Special Court, Mapusa, Goa.

18. Authenticated copy of the Order be given to the learned Counsels. Hamdust allowed.

N. A. BRITTO, J.

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